

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
NEW YORK HOTEL & MOTEL TRADES COUNCIL, :
AFL-CIO, :

Petitioner, :

-v- :

5th ST HOTEL LLC d/b/a NIGHT HOTEL BY SB AT :
TIMES SQUARE, et al., :

Respondents. :
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21-CV-5298 (JMF)

MEMORANDUM OPINION
AND ORDER

JESSE M. FURMAN, United States District Judge:

On June 15, 2021, Petitioner filed a Petition to Confirm Arbitration. ECF No. 1. On June 16, 2021, the Court set a briefing schedule for Petitioner's submission of any additional materials in support of the petition, Respondents' opposition, and Petitioner's reply. ECF No. 5. On July 20, 2021, following Respondents' failure to oppose the petition, the Court issued an Order to Show Cause as to why the petition should not be treated as unopposed. ECF No. 10. Petitioner then filed an Amended Petition and supplemental materials. ECF Nos. 15, 19. The Court set a briefing schedule giving Respondents until August 23, 2021, to oppose the petition and Petitioner until August 30, 2021, to reply. ECF No. 27. Petitioner served the Amended Petition and exhibits, summons, and briefing schedule on Respondents. ECF Nos. 28-31. To date, Respondents have neither responded to the petition nor otherwise sought relief from the Award.

The Court must treat the petition, even though unopposed, “as akin to a motion for summary judgment based on the movant’s submissions.” *Trs. for Mason Tenders Dist. Council Welfare Fund, Pension Fund, Annuity Fund & Training Program Fund v. Capstone Constr. Corp.*, 11-CV-1715 (JMF), 2013 WL 1703578, at *2 (S.D.N.Y. Apr. 19, 2013) (discussing in depth the legal standards for resolving unopposed petitions to confirm arbitration awards). After reviewing the petition and the supporting materials, the Court finds that there is no genuine issue of material fact precluding summary judgment as to all portions of the Award, as the Arbitrator’s decision provides more than “a barely colorable justification for the outcome reached.” *Id.* at *3 (internal quotation marks omitted). Nor is there any justification under Section 10(a) of the Federal Arbitration Act for vacating the Award.

Petitioner also seeks pre- and post-judgment interest. *See* ECF No. 19 at 8; ECF No. 19-2 at 10-11. The Court grants Petitioner’s request for pre-judgment interest at a rate of nine percent. *See Herrenknecht Corp. v. Best Rd. Boring*, No. 06-CV-5106 (JFK), 2007 WL 1149122, at *3 (S.D.N.Y. Apr. 16, 2007) (“The common practice among courts within the Second Circuit is to grant interest at a rate of nine percent, the rate of pre-judgment interest under New York State law.” (internal quotation marks omitted)); *Waterside Ocean Navigant Co. v. Int’l Navigation Ltd.*, 737 F.2d 150, 154 (2d Cir. 1984) (adopting a “presumption in favor of pre-judgment interest”). The Court also awards post-judgment interest pursuant to 28 U.S.C. § 1961(a), under which such interest “shall be allowed on any money judgment in a civil case recovered in a district court, . . . at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the judgment.” *See Bhd. of Locomotive Engineers &*


Trainmen v. Long Island R. Co., 340 F. App'x 727, 731 (2d Cir. 2009); *Media Force Ltd. v. Precise Leads, Inc.*, No. 20-CV-4050 (AT), 2020 WL 8669829, at *3 (S.D.N.Y. Nov. 30, 2020).

Petitioner also seeks attorneys' fees and costs but does not specify those fees. *See* ECF No. 19 at 8. Petitioner shall file any motion for attorneys' fees and costs by **September 8, 2021**. Any such motion should demonstrate the reasonableness and necessity of hours spent, rates charged, and litigation costs incurred, and should be supported by contemporaneous billing records. Respondent shall file any opposition to a motion for fees and costs by **September 15, 2021**. No reply will be permitted without leave of Court.

Accordingly, the Court grants Petitioner's unopposed petition to confirm the entire Award. Petitioner is directed to file their Proposed Judgment electronically, using the ECF Filing Event "Proposed Judgment," by no later than **September 1, 2021**.

SO ORDERED.

Dated: August 26, 2021
New York, New York



JESSE M. FURMAN
United States District Judge